

Remarks

1. Summary of Office Action

In the final office action, the Examiner maintained rejections of claims 1-9, 13, 14, 15, 16, 18-21, 24-26, and 28-35 under 35 U.S.C. § 103(a) as being allegedly obvious over U.S. Patent Application Pub. No. 2002/0055916 (Jost) in view of U.S. Patent No. 7,210,098 (Sibal). In addition, the Examiner maintained rejections of claims 10 and 17 under 35 U.S.C. § 103(a) as being allegedly obvious over Jost in view of Sibal in view of U.S. Patent Application Pub. No. 2002/0077823 (Fox), the Examiner maintained rejections of claims 11, 22, and 36 under 35 U.S.C. § 103(a) as being allegedly obvious over Jost in view of Sibal in view of U.S. Patent Application Pub. No. 2003/0084144 (Lipinski), and the Examiner maintained rejections of claims 12, 23, and 37 under 35 U.S.C. § 103(a) as being allegedly obvious over Jost in view of Sibal in view of Lipinski in view of U.S. Patent No. 4,874,963 (Alspector).

2. Status of the Claims

Pending are claims 1-4, 8-23, 28, and 30-37, of which claims 1, 14, and 31 are independent and the remainder are dependent.

3. Note about Claim Limitations and M.P.E.P. § 2111.04

In the "Response to Arguments" section of the final office action, the Examiner asserted that the language "at least two of the one or more browser pages" in Applicant's claim is merely suggested or optional because (i) Applicant's claims earlier recite "one or more browser pages" and (ii) the limitation is contained in a "wherein" clause.

With all due respect, Applicant notes that the Examiner's analysis is incorrect.

First, the fact that the claims earlier recite "one or more browser pages" does not change the fact that the language at issue is "at least two of the one or more browser pages." Quite

clearly, the recitation of "at least two of the . . ." means that the one or more browser pages must include at least two browser pages. There is no other way to read that language.

Simply put, the Examiner's conclusion that the language "'one or more browser pages. . .'" must be interpreted as one browser page to achieve the broadest most reasonable interpretation" is incorrect. Because the claim subsequently refers to at least two of the one or more browser pages, the only reasonable interpretation of the "one or more browser pages" is that there must be "more," namely, at least two.

The Examiner has sought to use M.P.E.P. § 2111 as a basis to conclude that the wherein clause containing the "at least two of the . . ." language is merely suggested or optional, considering that the earlier language recites "one or more." But that cannot be so, for the reason just noted. Namely, the language specifically adds that the claimed invention includes storing the respective weights in one or more attribute tags that are passed between at least two of the one or more browser pages. This is not a wherein clause that merely notes peripheral, inconsequential context. It is a wherein clause that provides a useful relevant limitation to the claim. Further, M.P.E.P. § 2111 clearly does not state that wherein clauses should not be considered. Rather, M.P.E.P. § 2111 merely states that a wherein clause is an example of "claim language. . . that may raise a question as to the limiting effect of the language in a claim." In this case, no basis exists to ignore this language of Applicant's claims.

3. Response to the Rejections

a. The Examiner's Error in Reliance on Sibal

As noted above, the Examiner rejected each of the independent claims 1, 14, and 31 as being allegedly obvious over Jost in view of Sibal.

In rejecting the claims, the Examiner relied on Jost for a teaching of a VOXML browser with prompts included in multiple browser pages, and for a teaching of selecting a next question to present to a user based on an overall score of the user's responses so far. The Examiner then appears to have admitted that Jost does not teach the claim feature of information being stored in one or more attribute tags that are communicated between at least two of the one or more browser pages (*see* office action, at page 8, lines 16-18), and thus that Jost does not teach the claim feature of the respective weights being stored in one or more attribute tags that are communicated between at least two of the one or more voice browser pages.

Given that, the Examiner then turned to Sibal and asserted that Figure 4 of Sibal teaches that information such as weights can be stored in an attribute tag that is communicated between two or more browser pages "in one type of browser". (Emphasis by the Examiner.) With all due respect, however, Applicant notes that this assertion by the Examiner is not correct. Sibal does not teach in Figure 4 that weights can be stored in an attribute tag that is communicated between two or more browser pages in one type of browser. At best, Sibal teaches synchronizing information in fields between disparate types of browsers (e.g., voice and visual browsers), so as to offer a user synchronized experiences between the two browsers.

Figure 4 of Sibal is merely a block diagram of an exemplary browser adapted for multi-modal use, and Sibal explains at columns 8-9 that the browser includes an HTML viewer 402 and a multi-modal manager 404. These components are logic modules. Sibal teaches that the HTML viewer 402 is a COM object that can parse HTML content, move around an HTML page based on what is encountered, and call another object to perform actions when certain HTML control structures such as relative links are encountered. And Sibal teaches that the multi-modal manager 404 functions to parse labels to which the HTML viewer 402 attempts to jump, to

determine that such a label links to a label on a VXML page, and to jump to that label on the VXML page. Overall, the result is thus to allow a relative link within an HTML document have the effect of signaling that some information must be sent to a voice browser. (*See* Sibal at column 8, line 36 – column 9, line 18.) Contrary to the Examiner's suggestion, there is no teaching there for one or more weights stored in an attribute tag to be communicated between two or more browser pages in one type of browser, such as between two or more voice browser pages as recited in Applicant's claims.

Given the Examiner erred in relying on Sibal's Figure 4 as allegedly teaching one or more attribute weights being communicated between two or more browser pages in one type of browser, the Examiner still seems to have asserted that Sibal's teaching of passing information between browser pages would have been enough to compel one of ordinary skill in the art at the time of Applicant's invention to modify Jost to achieve Applicant's claimed invention. But this is not so, for the reasons set forth in Applicant's last response.

As Applicant explained in the last response, Sibal is focused on providing a synchronized user experience between disparate browser types. Thus, Sibal's teaching would not reasonably or sensibly lead one of ordinary skill in the art to convey information (e.g., weights) between pages of a single browser type (e.g., between VoiceXML pages). One faced with Sibal would have no reason to apply Sibal's teaching in the context of a single browser type, since Sibal is focused on a multi-modal situation. Indeed, it seems that the only reason to try modifying Sibal's limited teaching so as to provide for passing information between browser pages of a single browser type (e.g., between VoiceXML browser pages) would be to intentionally reconstruct Applicant's invention using Applicant's claims as a blueprint for hindsight analysis. The Examiner has cited

no objective basis that suggests one would have been so compelled, however. Thus, the Examiner has not established *prima facie* obviousness of Applicant's claims.

For the Examiner's convenience, Applicant is providing in the next section the remarks that Applicant set forth in the last response. For those reasons and for the additional reasons set forth above, Applicant submits that the claim rejections are improper and should be withdrawn. Therefore, Applicant respectfully requests favorable reconsideration.

b. Arguments from the Last Response

After apparently admitting that Jost fails to teach the respective weights being stored in one or more attribute tags that are communicated between at least two of the one or more browser pages that are implemented with VoiceXML, the Examiner turned to Sibal for a disclosure of passing information from one browser to another (e.g., passing information between an HTML browser and a VoiceXML browser). The Examiner then reasoned that Sibal's disclosure of passing information between browsers to synchronize state on the browsers would render obvious a modification of Jost's disclosure so as to convey respective weights in attribute tags between VoiceXML browser pages.

Although Sibal discloses passing information between browsers, Sibal does not disclose doing so between pages of a VoiceXML browser. The theory underlying Sibal's disclosure is to synchronize two disparate browser types, so as to offer a user synchronized experiences between the two browsers. For instance, Sibal teaches the possibility of synchronizing field inputs between voice and visual browsers so that a user can fill out different fields of a single form using a combination of both voice and visual/tactile mode.

Yet this underlying theory and Sibal's examples would not logically lead to conveying respective assigned weights from one voice browser page to another voice page, as recited in Applicant's claims.

First, the idea of synchronizing the state of a voice browser and a visual browser does not objectively suggest passing information between pages in one type of browser. Applicant's invention provides for conveying the assigned respective weights in attribute tags between voice browser pages in order to facilitate ultimately processing the assigned weights so as to determine an overall weight and make a routing decision. (*See* Applicants claims. *See also* the discussion in the first full paragraph on page 20 of Applicant's specification.) This is not a process of synchronizing any browser pages or browsers. Rather, it is a convenient propagation function, to facilitate ultimate determination of overall weight and to thereby facilitate call routing.

Further, although the Examiner asserted that Sibal teaches that tags storing information can be communicated "between at least two of the one or more browser pages," it is important to note that Applicant's claims define the browser pages to be voice browser pages. Sibal's disclosure of conveying entered information between visual and voice browsers does not amount to the passing of information between voice browser pages. Still further, Sibal does not teach passing of assigned respective weights between browser pages.

Absent hindsight given the benefit of Applicant's patent application, one of ordinary skill in the art faced with the disclosures of Jost and Sibal would not be logically compelled to modify Jost so as to communicate assigned respective weights in attribute tags between voice browser pages as recited in Applicant's claims. Rather, the likely result of the combination would be that Jost's user interaction would be done with a combination of a voice browser and a visual browser, and a processor would maintain in data storage the ongoing scores for various machine

operations in line with Jost's disclosure. There would, however, be no need or logical reason to convey the assigned respective weights in attribute tags between voice browser pages as recited in Applicant's claims, notwithstanding the fact that Sibal teaches conveying other types of information (such as user entered values) between browser pages for purposes of providing a user with a synchronized experience between browser types.

Because the invention recited in Applicant's independent claims would not reasonably or logically follow from the limited disclosure of the Jost and Sibal references, Applicant submits that *prima facie* obviousness of the invention over Jost and Sibal does not exist. Consequently, Applicant submits that the independent claims are allowable. Further, Applicant submits that the dependent claims are allowable for at least the reason that they each depend from one of the allowable independent claims.

Applicant does not acquiesce in any assertion by the Examiner not specifically addressed in this response.

For the foregoing reasons, Applicant submits that all of the pending claims are allowable. Therefore, Applicant respectfully requests favorable action.

Should the Examiner wish to discuss this case with the undersigned, the Examiner is invited to call the undersigned at (312) 913-2141.

Respectfully submitted,

**McDONNELL BOEHNEN
HULBERT & BERGHOFF LLP**

Dated: May 12, 2009

By: /Lawrence H. Aaronson/
Lawrence H. Aaronson
Reg. No. 35,818